

production of a producer's milk be physically received at a distributing plant each month. It will maintain orderly marketing conditions and prevent uneconomic and inefficient movements of milk.

Accordingly, it is appropriate to suspend the aforesaid provision for an indefinite period beginning with the date of **Federal Register** publication of this document.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

#### List of Subjects in 7 CFR Part 1050

Milk marketing orders.

For the reasons set forth in the preamble, the following provision in Title 7, Part 1050, is amended as follows:

#### PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

1. The authority citation for 7 CFR Part 1050 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674.

##### § 1050.13 [Suspended in part]

2. In § 1050.13(d)(2), the words “not” and “it” where they first appear are suspended for an indefinite period effective upon publication in the **Federal Register**.

Dated: April 5, 1995.

**Patricia Jensen,**

*Acting Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 95–8852 Filed 4–10–95; 8:45 am]

BILLING CODE 3410–02–P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 2

RIN 3150–AF24

#### NRC Size Standards; Revision

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending the NRC's size standards used to qualify an NRC licensee as a “small entity” under the Regulatory Flexibility Act. This action is necessary to establish a separate standard to be used to determine whether a licensee who is a manufacturer would qualify as a small entity, to adjust the receipts-based standard to account for the effects of inflation since 1985, and to eliminate the separate \$1 million size standard for private practice physicians and apply the revised receipts-based size standard of \$5 million to this class of licensees.

**EFFECTIVE DATE:** May 11, 1995.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, telephone (301) 415–7163.

#### SUPPLEMENTARY INFORMATION:

##### Background

In 1983, the NRC surveyed its materials licensees to create an economic profile sufficient to consider regulatory alternatives tailored to the size of the licensee. After analyzing the data and consulting with the Small Business Administration (SBA), the NRC developed a proposed size standard that would be appropriate to use in determining which of its licensees would qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The NRC published its proposed size standard for notice and comment in the **Federal Register** of May 21, 1985 (50 FR 20913). After considering the comments received, the NRC adopted its final size standards as noted in the **Federal Register** of December 9, 1985 (50 FR 50241). In the **Federal Register** of November 6, 1991 (56 FR 56671), the NRC restated the size standards to include the Regulatory Flexibility Act's definition of small governmental jurisdiction. To further improve clarity, the NRC changed the presentation of the size standards to conform to the listing

of definitions of small entities in the Regulatory Flexibility Act.

#### The Proposed Rule

On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend the NRC's size standards. The NRC proposed to establish a separate standard to be used to determine whether a licensee who is a manufacturer would qualify as a small entity and to adjust the receipts-based standard to account for the effects of inflation since 1985. In addition, the NRC proposed to eliminate the separate \$1 million size standard for private practice physicians and apply the revised receipts-based size standard of \$5 million to this class of licensees. By amending the size standards through rulemaking, the NRC indicated its intent to codify NRC's size standards in 10 CFR part 2.

As discussed in the preamble to the proposed rule, these amendments were developed after several factors indicated that some adjustments to the NRC's size standards were desirable.

The NRC received a number of comments concerning its size standards and the failure of the NRC to promulgate a size standard that differentiates between manufacturing entities and service providers in response to the final rule implementing Public Law 101–508 (56 FR 31472; July 10, 1991, and subsequent years). These commenters indicated that applying a gross receipts standard to a manufacturing concern resulted in an adverse impact on a manufacturer. The SBA size standards for manufacturers are prescribed in terms of a maximum number of employees rather than in terms of gross receipts.

The NRC conducted a survey to update the economic profile of its materials licensees. The purpose of this survey was to evaluate the continued efficacy of NRC's size standards and to obtain the information needed to determine the necessity and effect of a separate standard for manufacturers within the context of the nuclear industry.

The SBA adjusted its receipts-based size standard levels to mitigate the effects of inflation from 1984 to the present in a final rule published in the **Federal Register** of April 7, 1994 (59 FR 16513).

#### Public Comment

The comment period on the proposed rule closed December 30, 1994. The NRC received two letters of public comment on this action.

One commenter objected to the inclusion of a size standard based on the

number of employees for qualification of a manufacturing concern as a small entity in the NRC's regulatory programs and the assessment of reduced annual fees. The commenter stated that the total employee population of a manufacturer has little bearing on revenue potential and revenue has little bearing on the risk to public health and safety. The commenter believes that although employee population may be a consideration, it must be considered in conjunction with revenue produced and with the complexity of the operation in determining size standards. The commenter also asserts that because manufacturers are authorized to possess significant quantities of multiple isotopes, both as sealed sources and loose material for use in the manufacture and distribution of products, they present a much higher risk than entities that hold a license for possession and use of sealed sources. The commenter states that the loss of revenue from manufacturers categorized as small entities will have to be made up by small licensees who may have only one or two devices on site.

The NRC is retaining a separate standard based on the number of employees for manufacturers in the final rule because this standard is required by the Small Business Act (15 U.S.C. 632 (a)(2)). This provision prohibits a Federal department or agency from prescribing a size standard for categorizing a business concern as a small business concern unless the standard provides for determining the size of a manufacturing concern based upon employment.

One commenter was pleased to see that the NRC raised the size standard for private practice physicians from \$1 million to \$5 million. However, the commenter indicated that this action did not go far enough in addressing the assessment of user fees. The commenter suggested that the NRC consider evaluating the gross receipts of departments within a medical facility that utilize NRC services and not the overall receipts of the facility. The commenter contends that if the NRC focused on the smaller entity within the license, many licensees would qualify for the small business exemptions and would pay fees based on the actual revenue generated under the license.

The NRC notes that the Small Business Act establishes criteria for a small business concern. To qualify as a small business concern, the concern must be independently owned and operated and not dominant in its field of operation (15 U.S.C. 632 (a)(1)). A department of a medical facility does not meet this criterion. The NRC has

included language in the final rule to address this type of situation.

In response to each of the comments, the NRC further emphasizes that the purpose of this rule is to amend the size standards used by the NRC to qualify an NRC licensee as a "small entity" under the Regulatory Flexibility Act. The application of these standards in the fee schedule rulemaking, or any other rulemaking proceeding, is beyond the scope of this rule.

#### **The Final Rule**

The NRC is adopting a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and would be the standard applicable to the types of manufacturing industries that would hold an NRC license. Under this standard, approximately 48 percent of the licensees who indicated that they were manufacturers would qualify as small entities.

The NRC is adjusting its receipts-based size standard to accommodate inflation and to conform to the SBA final rule. The NRC is raising its receipts-based small business size standard from \$3.5 million to \$5 million. The NRC also is eliminating the separate \$1 million size standard for private practice physicians and applying the revised receipts-based size standard of \$5 million to this class of licensees. This mirrors the revised SBA standard of \$5 million for medical practitioners. For greater clarity, the NRC has included a definition of the term receipts in the final rule.

The survey of materials licensees indicated that 26 percent qualified as small entities under the NRC standards being replaced by this rule. Under the size standards adopted in this document, 35 percent of these licensees would qualify as small entities, an increase of 9 percent. When NRC adopted its size standards in 1985, the NRC staff estimated that approximately 35 percent of the materials licensees would qualify as small entities.

The Small Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102-366) amended the Small Business Act concerning the establishment of agency-specific small business size standards. The NRC size standards were developed so as to meet the criteria specified in Pub. L. 102-366. As required by Pub. L. 102-366, the NRC size standards were approved by the Administrator, SBA.

This final rule also codifies NRC's size standards in part 2 of the Commission's regulations. Previously, NRC's size standards had been

published in the notices section of the **Federal Register**.

#### **Environmental Impact: Categorical Exclusion**

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

#### **Paperwork Reduction Act Statement**

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0136.

#### **Regulatory Analysis**

A regulatory analysis has not been prepared for this final rule because the final rule is administrative in that it amends the criteria the NRC uses for determining which of its licensees qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The amended size standards conform to SBA's revised standards and result in an increase in the number of NRC licensees that qualify as small entities.

#### **Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule is administrative in that it amends the criteria the NRC uses in determining which of its licensees qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The amended size standards conform to SBA's revised standards and result in an increase in the number of NRC licensees that would qualify as small entities.

#### **Backfit Analysis**

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, that a backfit analysis is not required for this final rule because these amendments do not impose any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

#### **List of Subjects in 10 CFR Part 2**

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear

materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendment to 10 CFR part 2.

## PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for part 2 continues to read as follows:

**Authority:** Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Section 2.810 is added to read as follows:

### § 2.810 NRC size standards.

The NRC shall use the size standards contained in this section to determine whether a licensee qualifies as a small entity in its regulatory programs.

(a) A small business is a for-profit concern and is a—

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last 3 completed fiscal years; or

(2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(b) A small organization is a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$5 million or less.

(c) A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

(d) A small educational institution is one that is—

(1) Supported by a qualifying small governmental jurisdiction; or

(2) Not state or publicly supported and has 500 or fewer employees.

(e) For the purposes of this section, the NRC shall use the Small Business Administration definition of receipts (13 CFR 121.402(b)(2)). A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

Dated at Rockville, Maryland, this 31st day of March, 1995.

For the Nuclear Regulatory Commission.

**James M. Taylor,**

*Executive Director for Operations.*

[FR Doc. 95-8843 Filed 4-10-95; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 95-AWP-4]

### Alteration of Class D Airspace; Williams Air Force Base (AFB), AZ

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** An error was discovered in a rule that was published in the **Federal Register** on March 15, 1995, Airspace Docket No. 95-AWP-4. The correct title description was inadvertently omitted from the rule. The alteration of this Class D airspace should only reflect the renaming of the airport from Williams

AFB, AZ, to Williams Gateway Airport, AZ. This action corrects that error.

**EFFECTIVE DATE:** 0901 UTC, May 25, 1995.

#### FOR FURTHER INFORMATION CONTACT:

Scott Speer, System Management Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297-0010.

#### SUPPLEMENTARY INFORMATION:

#### History

**Federal Register** Document 95-6380, Airspace Docket No. 95-AWP-4, published on March 15, 1995 (60 FR 13900), altered the Class D airspace at Williams AFB, AZ. The correct title description and geographic location of this Class D airspace is Chandler, AZ, which was inadvertently omitted from the rule. The only alteration of this Class D airspace area at Chandler, AZ, is the renaming of the airport to Williams Gateway Airport, AZ, due to the closure of Williams AFB, AZ. This action corrects that error.

#### Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the description for the Class D airspace at Williams Air Force Base (AFB), AZ, as published in the **Federal Register** on March 15, 1995 (60 FR 13900) (**Federal Register** Document 95-6380; page 13901, column 1), and the description in FAA Order 7400.9B, which is incorporated by reference in 14 CFR 71.1 are corrected as follows:

#### § 71.1 [Corrected]

On page 13901, in column 1, under Paragraph 5000, the first line of the airspace designation is corrected to read as follows:

\* \* \* \* \*

#### AWP AZ D Chandler, AZ [Revised]

\* \* \* \* \*

Issued in Los Angeles, California, on March 27, 1995.

**Dennis T. Koehler,**

*Acting Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 95-8767 Filed 4-10-95; 8:45 am]

BILLING CODE 4910-13-M